ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act	)	
Competitive Bidding	)	

COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

By: Larry Blosser
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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Summary

In crafting auction rules for PCS, the Commission should adopt rules that maximize consumer welfare, rather than maximize action revenues. In order to achieve the statutory objectives of maximizing competition and avoiding excessive concentration of licenses, the Commission should exclude the dominant cellular providers from bidding on one entire band of the 30 MHz MTA licenses, out-of-region as well as in-region. A dominant cellular provider would be defined as an entity which holds a greater than 20% interest in individual cellular system licenses that cover, in the aggregate, more than 10% of the nation's POPs.

MCI recommends that the Commission authorize nationwide combination bids for three 30 MHz blocks of PCS spectrum: those identified in the Report and Order as bands A and B, plus bands E, F and G as a group. The auction process should begin with band A and continue through band G. Oral bidding in each block should commence with the smallest area and proceed to the largest, to maximize information flows to bidders. Sealed second highest bid auctions would be employed for authorized combination bids.

MCI supports the Commission's efforts to maximize economic opportunities for designated entities. Tax certificates and installment payments are reasonable means to promote such opportunities. The Commission should adopt measures designed to ensure that only qualified entities submit bids. Legitimate consortia and group bids should be facilitated. Collusion, bid-rigging and undisclosed real parties in interest must be prohibited.

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COMMENTS

MCI Telecommunications Corporation (MCI), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. The implementation of competitive bidding will have dramatic and far-reaching effects on the Commission's spectrum licensing processes, on parties seeking licenses to provide PCS and other services, and on the public.

I. OBJECTIVES

Congress provided the Commission with several lengthy lists of goals and objectives for spectrum auctions, both in the auction provisions of the Budget Act and in the accompanying legislative history. Congress made it abundantly clear, however, that in striving toward the objectives enumerated in the Budget Act, the Commission is to be guided by the protection of the public interest and the purposes specified in Section 1 of the Communications Act. Obviously, not all of the objectives can be given equal priority, and the FCC must interpret the intent of Congress and prioritize the relevant objectives as they apply to particular services which are subject to competitive bidding.

MCI submits that the following list represents the most important statutory objectives for the implementation of PCS auctions:

- rapid deployment of service to the public
- economic opportunity and competition
- avoidance of excessive concentration of licenses
- disseminating licenses among a wide variety of applicants, including small businesses, etc.
- efficient and intensive use of the electromagnetic spectrum

Each of these objectives should be met as part of the final auction rules.

Also, consistent with the intent of Congress and the need to introduce competition for the entrenched cellular duopolists, the Commission should give a high priority to the conduct of the broadband PCS auctions, finishing all bidding for the MTA-based licenses in May, 1994.

II. AUCTIONS AND PCS

The auction legislation provides the FCC the ability to use "price" to allocate scarce resources. In perfectly competitive markets, oral auctions of spectrum without any bidding restrictions would maximize economic efficiency.

However, in crafting auction procedures, the Commission must be mindful that the wireless market is far from being perfectly competitive. The current market is dominated by nine cellular providers on a nationwide basis, and is stymied by duopoly pricing at a local level.

Also, because many cellular licensees paid little or nothing for their licenses, PCS entrants will be at a competitive disadvantage from the outset, if they are required to pay high

prices at auction to gain access to needed spectrum. Auction rules which are not firmly grounded in recognition of this potential competitive inequity can jeopardize the ability of PCS entrants to offer service in effective competition with existing wireless service providers. For example, the recovery of $4 billion in the form of auction bids from PCS licensees, as originally envisioned by the Congressional Budget Office, would equate to an effective tax of $12.00 per PCS customer per month over the next five years, or roughly 25% of the expected revenue (assuming 1.6 million PCS customers in 1994 and growing to 9 million in 1998). This "tax", when added to the inherent costs associated with the relocation of existing OFS users in the spectrum, could prevent PCS from reaching its full potential, or even threaten its viability altogether.

Another factor for the Commission to consider is the potential conflict between maximizing auction revenues and maximizing consumer welfare. If the FCC's PCS spectrum allocations were perceived by potential bidders to lead to a perfectly competitive market, then bids for spectrum would be driven downwards, approaching its opportunity cost.

In the attached Exhibit, Dr. Daniel Kelley shows that the Commission can maximize consumer welfare by adopting rules to maximize competition, and should not gear its rules toward maximizing auction revenues. Therefore, the Commission should seek to establish auction rules and procedures that maximize the potential for competition against the entrenched cellular duopolists.

III. AUCTION RULES TO MAXIMIZE WIRELESS COMPETITION

As the Commission recognized in the NPRM: "eligibility restrictions, i.e., excluding parties who are potentially the highest bidders, may be an appropriate safeguard to promote economic efficiency and the statutory objectives in Section 309(j)(3)". (¶ 34, n. 26). The Commission stated:

> For the purpose of avoiding undue concentration, commenters should address whether the Commission needs to adopt specific rules limiting eligibility for licenses, other than those already in existing service rules. Commenters should include in their comments discussion of whether we should take into account the other radio licenses already held by bidders. (¶ 81)

In Section II, we explained that: 1) the current wireless industry is dominated by nine cellular carriers, 2) many of these carriers received a "free" set-aside of cellular spectrum, 3) all have been exempted from auction for license renewals creating a competitive inequity vis-a-vis PCS entrants, and 4) the Commission can maximize consumer welfare through PCS auctions by designing rules to maximize wireless competition, not by maximizing revenues to the Treasury.

In order to achieve the statutory objectives of maximizing competition and avoiding excessive concentration of licenses, MCI believes the Commission should exclude the dominant cellular providers (and their affiliates) from bidding on one entire band of the 30 MHz MTA licenses, whether the particular MTAs in that band represent an in-region or out-of-region MTA to a particular dominant cellular provider.

Such an approach would allow new entrants and non-dominant cellular providers with an opportunity to bid on spectrum in one 30 MHz MTA band without having to bid against the dominant cellular providers.

Such an approach could be viewed as analogous to the original cellular allocations, where the LECs where excluded from applying for the A block of cellular licenses.

There are many reasons to support such a public policy approach, beyond the obvious benefits of promoting competition and reducing the opportunity for undue concentration of control.

First, as mentioned, the incumbent cellular providers have been exempted from auctions, providing them an unsurpassable competitive advantage.

Second, the market for wireless service has national characteristics to it given AT&T's and McCaw's pronouncements and the nationwide branding of MobiLink. Also, the dominant cellular providers often jointly plan and cooperate, leading to less competition in local markets. See Exhibit I for an explanation of this behavior and its impact on local competition.

Third, dominant cellular providers have a much lower "hurdle rate" (which is set by cost of capital and risk assessment) in bidding for PCS licenses than new entrants. The difference between a 15% hurdle rate and a 20% hurdle rate equates to roughly doubling of the bid price. Without any eligibility restrictions, the dominant cellular providers will end up with all of the PCS spectrum.

Fourth, the dominant cellular providers have at least an incentive to collude tacitly in bidding on the two 30 MHz bands to eliminate new competition. This incentive could manifest itself by individual dominant cellular carriers bidding for this spectrum in different markets so that no new entrants are able to successfully bid on spectrum, or accumulate a competitively threatening portfolio of PCS licenses.

For these reasons, MCI believes that the Commission should exclude the dominant cellular carriers from bidding on one entire MTA band of licenses. For purposes of this restriction, a dominant cellular provider would be defined as any entity that owns more than 20% of individual cellular licensees that cover -- in the aggregate -- more than 10% of the nation's POPs. Such a definition would be consistent with the cellular attribution and overlap definitions in the PCS Report and Order as well as other Commission precedent. See, e.g., the Commission's network/cable cross-ownership rule, 47 CFR §76.501 (b).

IV. AUCTION PROCEDURES FOR BROADBAND PCS LICENSES

A. Auction Design

In the NPRM, the Commission has described a comprehensive array of proposals pursuant to which it would award licenses through competitive bidding. As a general matter, MCI supports many of the Commission's preferred auction options and, in these Comments, will discuss only a limited number of proposals which, we believe, deserve particular emphasis. Moreover, because of the need for expedition in establishing procedures for the awarding of broadband PCS licenses, we focus our comments on auction procedures and requirements that should be applicable to broadband PCS and not necessarily to other services. We do not address, and express no opinion on, auction procedures or requirements for narrowband PCS or other services where different procedures and requirements may be appropriate.

1. Combination Bidding On A Nationwide Basis Should Be Permitted.

MCI agrees with the Commission that, in addition to bidding for individual licenses, combination (or group) bidding for licenses should be allowed in certain circumstances.[1/] The Commission is no doubt correct that "[c]ombining certain licenses across spectrum and geographic areas will reduce costs and promote the provision of higher valued services. If the auction system does not provide for such aggregation, most of it will occur eventually in the aftermarket." NPRM at ¶ 35. In such cases, aggregation will not only be costly but the gain will flow to traders, not the public. Therefore, combination bidding should be permitted for certain broadband PCS licenses.

However, unlimited combination bidding could be extremely costly to the public -- in terms of both delay and expense -- if bids grouping any and all geographic areas and spectrum bands were permitted. Under those circumstances, in order to determine the "winning" bid for a particular license or group, the Commission would have to monitor and compare the auction results for an almost unlimited permutation of combination bids and the auction results for individual spectrum bands in particular geographic areas which comprise each combination bid. Therefore, MCI urges the Commission to limit combination bidding geographically to only a nationwide combination of the MTA-based licenses and a nationwide combination of three of the 10 MHz bands (bands E, F, and G) as a group.

[1/] There is nothing in the Budget Act which suggests that the Commission is not authorized to conduct combination nationwide bidding. The Commission's reasoning in this regard is sound. See NPRM at n. 40. See also, Letter dated September 21, 1993 from Rep. John D. Dingell to Chairman James H. Quello recommending "combinatorial" bidding.

Given the mechanical and procedural complexities involved in permitting aggregation by group bidding across numerous geographic areas and spectrum bands, other cross-spectrum, cross-geographic area group bidding should not be permitted, particularly for license groups consisting of fragmented geographic regions (e.g., all MTA's west of the Mississippi; all BTAs in an MTA except those in low-density areas).

National combination PCS bids should be allowed on both sets of 30 MHz bands allocated on an MTA basis and on a group of three 10 MHz bands (bands E, F and G). By permitting such national combination bidding, the Commission could obtain some -- but not all -- of the public interest benefits of a national consortium of the type recommended by MCI in this proceeding.[2/] The Commission will also better foster nationwide competition. In sum, national combination bidding will better ensure rapid deployment of PCS on a nationwide basis, reduce the transaction costs that might otherwise exist in order to achieve nationwide aggregation, and would provide the opportunity for competition to develop on both a nationwide and market-by-market basis.

2. Sealed Second-Bid Auctions Will Ensure That Full Value For The Spectrum Is Obtained.

The Commission should use a "sealed second-bid" auction to award national combination PCS licenses. The advantages of such auctions are not merely "theoretical" as suggested by the Commission (at ¶ 45). Rather, such auctions do indeed result in each bidder carefully calculating and bidding the maximum amount it is willing to pay for a license. Moreover, as

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[2/] See Comments filed by MCI Telecommunications Corporation, Gen. Docket No. 90-314, November 9, 1992.

the Commission recognized, sealed second-bid auctions not only award an item to those who value it most, but also they are relatively resistant to collusion. Id.

The Commission's concerns about sealed second bid auctions are misplaced at least insofar as would be the case if they were used for nationwide combination bidding. In fact, the Commission recognized that sealed second-bid auctions "would be useful when using auctions to determine whether to issue licenses individually or as a package," as would be the case in the nationwide combination bidding proposed by MCI. NPRM at ¶ 44.

In a nationwide combined bidding auction the "bidding is not expected to be intense" and, under those circumstances, the advantages of sealed second-bids are pronounced, as the Commission recognized. Id. at ¶ 62. The fact that such auctions generally "may reveal a large gap between the amount the winning bidder is willing to pay and what is actually paid" (id.) is not a sufficient reason to reject use of sealed second-bid auctions for national combination bids. Moreover, this process, when used for such combination bidding, will not be more complex than a standard sealed bid auction. Finally, at least insofar as national group bidding is concerned, MCI doubts that bidders will be "reluctant to reveal their maximum willingness to pay for fear this information may subsequently be used to their detriment." Id. at ¶ 45. Therefore, none of the theoretical disadvantages of sealed second-bid auctions apply in the case of nationwide combination bidding, and such bidding should be used for awarding PCS licenses where nationwide group bidding for MTAs is permitted.

B. Auction Procedures And Requirements

1. Auction Procedures And Safeguards

MCI generally agrees with the Commission that sealed bids for nationwide combination PCS licenses should be accepted prior to auctions for individual MTAs, and that the sealed bids should not be opened until after oral bidding on the individual MTA markets has been completed. NPRM at ¶¶ 58-59. MCI believes that sealed group bids should be permitted to be withdrawn at any time before they are opened, including after the oral auctions for the licenses comprising the group bid have been held. Oral auctions within particular bands should be conducted first for the smallest markets, proceeding in order of size to the largest market in a given band before auctioning the next band. Such an approach would maximize information to bidders, and increase auction receipts.

MCI recommends a slight change in the Commission's proposed approach for combination or group bids. That is, instead of accepting sealed bids for bands A and B, then conducting oral bidding on both bands, the two 30 MHz MTA-based bands should be auctioned in the sequence described below:

1) Accept combination (national) sealed bids for band A.

2) Conduct oral auction for band A MTA licenses.

3) Accept combination (national) sealed bids for band B.

4) Conduct oral auction for band B MTA licenses.

5) Open all sealed bids that haven't been withdrawn.

6) If combination bid wins in either band, allow that entity to withdraw any MTA winning bids in the other band.

7) MTAs from which bids are withdrawn are either re-auctioned or awarded to second-highest bidder; disposition would be specified in final auction rules.

This bid sequence is necessary to avoid an inequitable situation in the band B auction. In particular, the individual MTA bidders will have received a great deal of information on the value of spectrum during the band A bidding. If sealed bids were submitted for both 30 MHz bands prior to auction of either of these bands, any party submitting a sealed bid on band B would not have this information, and would be disadvantaged vis a vis those parties participating in the band B oral auction. Therefore, the sealed bids for band B should only be submitted after the band A licenses have been subjected to oral bidding.

MCI recommends this bidding sequence for the two 30 MHz bands, designated A and B. The Commission could accept sealed bids for band B within a day or two after the conclusion of oral bidding for band A. Even a week's delay between the completion of the band A auction and the submission of sealed bids for band B should not significantly delay the completion of the auction process, given that there are "only" 102 MTA bidding opportunities in the two bands combined.

The NPRM (at ¶ 120) proposes that the sealed nationwide group bids for band A be opened after the individual band A bids are completed but before the individual auctions for band B MTAs are conducted. However, because the total amounts bid for either the individual band A or B MTAs may have an effect on the decision of an entity to withdraw its sealed group bid for either band A or B nationwide groupings, the nationwide group bids (i.e., for all MTAs) should be opened only after the individual oral auctions are held for both bands A and B.

After completing auctions for bands A and B, the Commission should accept sealed bids for permissible groupings in bands C through G, and then conduct oral auctions for bands C through G, in that order.

For bands C through G, after the oral bidding for all of the bands is completed, the sealed bids for the MTA and nationwide groupings should be opened. In these bands, it would be more efficient to conduct oral auctions before any sealed bids are opened, given the many bidding opportunities in each band. Although parties wishing to submit combination bids on MTAs in the C through G bands would not have knowledge of the oral bid prices in the 20 and 10 MHz bands preceding their own, they would have had an equal opportunity to observe the bidding process for MTAs in bands A and B before submitting their group bids for smaller allocations in the same markets.

Following the oral bidding and the sealed group bidding, no additional round(s) of bidding by the oral bid winners should be permitted since that would add additional layers of complexity and delay -- and possibly collusion -- to a process whose goal is to achieve quick, efficient and fair distribution of licenses.[3/] Because the individual winners of the oral auction will know what aggregate amount they have to "beat" to defeat the group bidder, a defeated group bidder might covertly support some of the oral winners to make certain its erstwhile competitor for the nationwide license does not get to take advantage of its "winning" sealed bid.

[3/] The Commission should not impose any floors or ceilings on total bid amounts. A statutory goal in authorizing spectrum auctions was to ensure that the public recovers a portion of the value of the spectrum. The market is the best mechanism to determine the value placed on particular spectrum by those willing to bid for licenses using that spectrum.

In any event, if the Commission provides for additional bidding, it should permit group bidders as well as the individual bidders to "raise" each other until the bidding is concluded.

MCI agrees with the Commission that safeguards must be in place to ensure that only serious qualified bidders participate in the competitive bidding process. To this end, a significant upfront payment must be submitted as a condition of entry to the portion of the auction premises reserved exclusively for bidders. The Commission's proposed "2 cents per megahertz per pop" calculation is a reasonable basis on which to determine such an upfront payment. See NPRM at ¶ 103.

To further ensure that only serious bidders participate, this advance payment should be non-refundable for the auction winners. At least for auctions for grouped nationwide or MTA licenses, where the advance payment will be a significant sum sufficient to preclude frivolous bidding, no additional deposit should be required of the winners. To require that such a winning bidder have available at the time of the auction a further significant deposit in an uncertain amount (or a number of uncertain amounts if it bids on several licenses) is simply not reasonable. Other alternatives are available, as suggested in the NPRM (at ¶ 105).

Within a reasonable period of time (e.g., 45 days) following grant of a winner's application, the winner should be required to make a lump-sum payment to the Commission in an amount equal to the difference between the winning bid and the upfront payment previously paid. Each winner (both group and individual) should be required to make the lump-sum payment on a timely basis or forfeit its license, except for designated entities which should be permitted to pay in installments.

Finally, the Commission should permit post-application, pre-auction settlements no later than 48 hours before the proposed auction. Under such settlements, all bidders for particular licenses -- both group bidders and those bidding individually for the licenses making up the group -- must notify the Commission of the settlement.

V. TREATMENT OF DESIGNATED ENTITIES

The NPRM discusses a number of proposals to implement the Budget Act's mandate to the Commission to ensure that businesses owned by women and minorities -- as well as small businesses and rural telcos -- are "given the opportunity to participate" in the provision of spectrum-based services. Among the measures described by the Commission are set-asides, tax certificates and installment (as opposed to lump-sum) payment requirements. NPRM at ¶ 72-81. MCI supports the Commission's effort to maximize the economic opportunities for designated entities. In particular, the use of tax certificates as discussed in the NPRM (at notes 58 and 64) and installment payments (¶ 79) appear to be reasonable and relatively noncontroversial methods to foster participation by designated entities in the economic opportunities presented by spectrum auctions. However, the Commission must be vigilant to ensure that the benefits accorded such entities accrue only to them (or their backers in the case of tax certificates), even if they are part of a larger consortium. For instance, if designated entities (in the aggregate) own 20% of a national consortium which is a winning bidder, the consortium should be required to make a

lump-sum payment of 80% of the amount otherwise due, with the remaining 20% of that amount being paid in installments to reflect the designated entities' 20% interest in the consortium.[4/] As for the proposal to set aside frequency bands for designated entities, the Commission has recognized that it may raise particular legal and constitutional questions if set-asides are gender or race-based. NPRM at ¶ 73-74. Similarly, the Commission suggests that providing a rural entity set-aside in urban areas may be problematic. Id. at ¶ 77.

If the Commission ultimately establishes set-asides for any designated entity, MCI urges the Commission to explicitly state that such provisions are severable from the other rules it adopts with respect to competitive bidding. Given the possibility of court challenge to those set-aside provisions, an explicit severability clause would buttress the usual argument that the remainder of the FCC's rules adopted in this proceeding may be implemented even if the set-asides are stayed or reversed.

VI. COLLUSION

As the NPRM recognizes, the auction rules should permit the formation of efficiency enhancing bidding consortia that pool capital and expertise of firms, especially for MTA or nationwide combination bids. NPRM, ¶ 93. The Commission has a strong interest in encouraging the formation of consortia because consortia can (a) facilitate the creation of seamless nationwide PCS that more efficiently meets consumer demand, (b) pool the resources

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[4/] To protect the designated entities within such a consortium, the Commission should require that the consortium be prohibited from requiring of its designated-entity members payments to the consortium (through capital calls or the like) in any amounts other than those reflecting the installment payments due the Commission.

of varied firms with different expertise to contribute, and (c) provide opportunities for small businesses and businesses owned by women and minorities to participate in PCS.

In particular, any anti-collusion rules should not interfere with the ability of groups of firms to submit combination bids for groups of licenses. See NPRM at ¶ 57. An individual firm might not be able to afford combination bidding by itself. To permit the auction to achieve its goal of realizing the highest value for groups of licenses that are likely to have more value as a package than individually, id., groups of firms should be permitted to submit combination bids.

However, collusive conduct that cannot increase efficiency or diversity and that undermines the integrity of the auction process has no place. In particular, potential bidders should not agree on a maximum amount for bids, nor should they agree that one firm will not bid against another for a license in one territory in exchange for the agreement of the other not to bid for a license in another territory. Under well-established precedent, such bid-rigging is unlawful per se under the federal antitrust laws.

The Commission should not adopt rules prohibiting conduct already prohibited by the antitrust laws unless it is satisfied that duplicative anti-collusion rules would serve a useful purpose without serious disadvantages. As the NPRM suggests (¶ 94), the Commission could retain the authority to take appropriate action against any person convicted of an antitrust or similar criminal violation in connection with an FCC auction. However, given the scarcity of Commission resources, the Justice Department's aggressive efforts to investigate and prosecute bid-rigging, and the incentives built into the antitrust laws for parties injured by collusive action to seek relief (including treble damages and attorneys' fees), it might be appropriate for the

Commission to rely primarily on governmental and private enforcement of the antitrust laws, rather than commit its own resources to investigate and adjudicate possible antitrust violations.

MCI does not believe that any specific penalty ought to follow automatically from any judicial determination of a violation of antitrust rules in connection with an FCC auction. Rather, the Commission's rules should give the Commission discretion to fashion a remedy appropriate to the adjudicated violation, ranging denial or revocation of a license, to a ban on participation in future auctions, to monetary civil penalties.

MCI believes that an approach that would strike a reasonable balance between the goals of facilitating legitimate consortia and group bids and of avoiding illegitimate forms of bid-rigging would be to require bidders to make full disclosure of any agreement with any other actual or potential bidder regarding the auction, including any person with any direct or indirect stake in the success of the bid. Any member of a consortium ought to disclose its participation in a consortium. If a bidder has an agreement with other firms to form a partnership or other form of joint venture if its bid is successful, the agreement ought to be disclosed. Such disclosure would permit the Commission to obtain additional information in appropriate cases. Of course, failure to disclose an agreement as required by the rules would subject the violator to appropriate sanctions.

VII. MISCELLANEOUS RULE PROPOSALS

Long-Form Applications. The Commission is correct in proposing a number of requirements to ensure that bidders and applicants are bona fide. Nevertheless, MCI believes it is unnecessary to require that applicants file the proposed PCS long-form applications prior

to the auctions. Because the Commission does not intend to examine those applications until after the auctions, the Commission loses nothing in deferring such filings until after an auction winner is selected. The appropriate amount of time within which a PCS auction winner should file its long-form application should be dependent upon the level of detail required in such applications. A filing deadline for the PCS long-form applications should not be adopted until it is decided what information will be included in those applications.

Application Forms and Filing Fees. For the initial licensing of broadband PCS, the Commission should not implement its proposal (in ¶ 128 of the NPRM), that applicants file FCC Form 401 to provide common carrier service, FCC Form 574 to private service, or both if both types of services are to be provided. Each applicant for an initial license in the 2 GHz PCS bands should be required to file an FCC Form 401 (with the appropriate filing fee) and establish its qualifications to hold a radio license in the common carrier service. The approach described in the NPRM would create an administrative nightmare and open bidding for large blocks of spectrum to foreign companies.

Filing and Processing Rules. The Commission proposes to apply certain "filing and processing rules" from Part 22 "to all PCS." NPRM ¶ 128. Although MCI supports the Commission's goal of "avoid[ing] needless duplication," the wholesale incorporation by reference of Part 22 (or Part 90) rules may cause unnecessary confusion and generate controversy. For example, the application of Section 22.15 "Technical Content of Applications" to PCS is inconsistent with the recently adopted PCS rules, which declare that "Applications for individual sites are not needed and will not be accepted." See PCS Report and Order, October 22, 1993, Appendix A § 99.15 (b). The Commission should carefully reexamine the filing and

processing rules identified in ¶ 128 of the NPRM and clearly identify those which sections and subsections which will apply to PCS in the Report and Order in this proceeding. Consistent with MCI's overall recommendations, all eligibility requirements and processing rules for broadband PCS should be derived from the common carrier rules in Part 22.

Financial Qualifications Rule. In ¶ 128 of the NPRM, the Commission proposes to apply to PCS the financial qualifications standard applicable to cellular RSA applications. Application of such a stringent standard to broadband PCS is unwarranted. This standard would require all applicants to pay a bank commitment fee on the order of one to 1-1/2 percent of the funds to be borrowed for the initial construction and first year operation of their proposed systems. This could represent an enormous aggregate outlay in broadband PCS, especially if financial qualifications exhibits are to be required in the pre-bid applications, as proposed. Funds committed by banks under such a rule would not be available to finance other ventures for the duration of the auction process, or until the commitments expired. MCI believes that the 2 cents per POP per MHz pre-bid deposit, plus a requirement that the winner pay the remainder of the bid within 45 days of authorization, provides adequate evidence of financial qualification. The Commission should not adopt the "firm financial commitment" rule for broadband PCS applications.

Resolution of Bidder Eligibility Questions. The Commission's proposal, at ¶ 170 and n. 185, to "err on the side of leniency and allow...potential bidders to bid" should not be adopted for broadband PCS.[5/] Issues related to a prospective bidder's legal qualifications to bid for a

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[5/] As a general matter, it would not be unreasonable to permit applicants whose applications are deemed defective on initial screening and reconsideration, to bid at their own risk pending Commission review and judicial appeal.

broadband PCS license should be resolved by the Commission prior to auction. Although requests for waivers of the Commission's eligibility rules should be strongly discouraged, there may be unique and truly compelling cases in which a prospective bidder would seek a waiver. In such instances, the rules should provide for expedited Commission review of the staff's ruling prior to auction.

Warehousing of Spectrum. The Commission has a legitimate concern about the warehousing of spectrum. Therefore, MCI supports imposition of build-out requirements such as proposed by the Commission in this proceeding (at ¶ 90-93) and in the PCS Order (at ¶ 134) to ensure that warehousing will be deterred. If such requirements are strict, and are strictly enforced, no additional "performance" requirements would be necessary.

Transferability. As the Commission recognized, "[a]s long as transfer of licenses is permitted, valuable spectrum licenses are unlikely to be warehoused." NPRM at ¶ 91. For this reason, MCI opposes any restrictions on the transfer of licenses won at auction except for restrictions arising out of the eligibility of particular entities for a particular band. As for "designated entities" who have won licenses at auction, a minimum period of commercial operation (e.g., 3 years) should be required prior to permitting transfer of such licenses unless the transfer is to another designated entity.

Eligibility. The Commission should also strictly enforce the criteria it has proposed for eligibility to bid for particular bands. In particular, a cellular carrier should not be permitted to circumvent restrictions on its eligibility by representing that it will divest its offending cellular interests should it win an auction for a license for which it is ineligible to bid. Similarly, no cellular carrier should be permitted to acquire a PCS license for which it was originally

ineligible to apply unless the circumstances which made it ineligible no longer pertain (e.g., it no longer owns the cellular system(s) which made it ineligible).

We assume the 10% overlap requirement adopted in the PCS Report and Order (at ¶ 40) will apply in determining whether cellular entities are eligible to participate in auctions for spectrum other than spectrum in the 10 MHz band permitted for cellular. See NPRM at ¶ 107. This being the case, the Commission must clarify -- and strictly apply -- its proposed attribution rules. An example of the appropriate level of clarity is the statement in the PCS Report and Order (at ¶ 107) that a party with a 20% or greater ownership interest in a cellular system will be treated as an in-region cellular entity for purposes of applying the 10% overlap rule. Other eligibility requirements and restrictions are not as clear and explicit. For example, footnote 93 of the Report and Order implies that the Commission intends to utilize the cellular real party in interest and affiliate interest rule (Section 22.13) in PCS. MCI supports the application of this rule, and urges the Commission to make compliance with 22.13 an express requirement. This would ensure that all parties to the application are identified at the outset. Such rules are clearly necessary to prevent various entities acting as agents, brokers, or trustees from entering bids on behalf of undisclosed principals, to be identified only after the auction is completed. The real party or parties in interest should be identified at the initial filing stage to prevent circumvention of the in-territory cellular eligibility restriction and any other restrictions the Commission may adopt in the final rules.

Adoption of a rule like Section 22.13 for PCS would be consistent with the example in footnote 93 of the Report and Order. A requirement that any 5% or greater interest of an affiliate or subsidiary be disclosed in the initial application and attributed to the affiliate,

subsidiary or parent participating in a PCS application is both reasonable and practicable, as the Commission's experience with cellular applications has amply demonstrated.

While the Report and Order establishes the PCS ownership attribution limit at 5%, the NPRM contains no discussion of the attribution standards which apply to entities holding interests in PCS entities (including applicants, consortia, and licensees). It is important that the rules clearly specify which entities are to be considered PCS providers through the affiliate interest rules.[6/] These issues will arise both in later PCS auctions and, following auctions, whenever entities with an interest in PCS licenses acquire interests in cellular licenses.

Intermediate Microwave Links. The Commission's proposal to use competitive bidding for licensing of intermediate microwave links used in the provision of commercial mobile services (NPRM, ¶¶ 29-33, 157) should not be adopted. Like their Private Operational Fixed Service counterparts licensed under Part 94, common carrier microwave applications filed under Part 21 are "prior coordinated," so that mutual exclusivity rarely arises. Even if the Commission were to conclude that Congress intended Part 21 intermediate links to fall within the scope of auction authority, the Commission should weigh carefully the prospect that competitive bidding would invite speculative and strike applications in this service, thereby increasing administrative burdens and delays which would outweigh any incremental revenue gain.

[6/] The Commission should expand its cross-ownership rules for cellular and PCS to include SMR frequencies. For example, where an entity owns 20% or more of a cellular license or 5% or more of a 30 MHz PCS license, it should not be able to own more than 10 MHz of SMR spectrum in any geographic region that contains more than 10% overlap with the cellular or PCS license. The ownership attribution limit for SMR licenses should be set at 5%, as the Commission did for PCS licenses in its Report and Order.